THE OPTIONS CLEARING CORPORATION

ONE N. WACKER DRIVE, SUITE 500, CHICAGO, ILLINOIS 60606

WILLIAM H. NAVIN

EXECUTIVE VICE PRESIDENT, GENERAL COUNSEL, AND SECRETARY

TEL 312.322.1817 FAX 312.322.1836

WNAVIN@THEOCC.COM

October 29, 2010

Via Electronic Submission

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Request for Comment on Options for a Proposed Exemptive Order Relating to the Trading and Clearing of Precious Metal Commodity-Based ETFs

Dear Mr. Stawick:

This letter is submitted by The Options Clearing Corporation ("OCC") in response to the request by the Commodity Futures Trading Commission ("CFTC" or the "Commission") for comment on "(i) options for a proposed exemptive order in connection with the OCC's request for approval of a rule change; and (ii) the Commission's treatment of precious metal commodity-based exchange-traded funds ("Commodity-Based ETFs") generally, including whether the Commission should exempt the trading and clearing of options and futures on transactions on gold and silver, and/or palladium and platinum, Commodity-Based ETFs on a categorical basis."[1]

As noted in the Release, OCC has filed and the Commission has approved rule changes enabling OCC to clear options and futures on several Commodity-Based ETFs as options on securities and security futures, respectively.[2] The Release references OCC's pending rule change filing related to the clearing of options and futures on ETFS Palladium Shares and ETFS Platinum Shares (the "Palladium and Platinum Products").[3] Two additional OCC rule change filings are also pending with the Commission that raise similar issues, one related to options and

[1] 75 FR 60411-60415 (September 30, 2010) (the "Release").

[2] *See* CFTC, *Order Exempting the Trading and Clearing of Certain Products Related to SPDR Gold Trust Shares,* 73 FR 31981 (June 5, 2008), CFTC, *Order Exempting the Trading and Clearing of Certain Products Related to iShares COMEX Gold Trust Shares and iShares Silver Trust Shares,* 73 FR 79830 (December 30, 2008), and CFTC, *Order Exempting the Trading and Clearing of Certain Products Related to ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares,* 75 FR 37406 (June 29, 2010) (collectively, the "Previous Orders").

[3] *See* Rule Filing SR-OCC-2010-03.

futures on the CBOE Gold ETF Volatility ("GVZ") Index[4] and the other related to options and futures on Sprott Physical Gold Shares.[5] It is our understanding that the Commission is addressing the filing related to the GVZ Index separately at OCC's request.

ETFS Physical Precious Metals Basket Shares ("GLTR") is a newly introduced product that is substantially the same as those Commodity-Based ETFs currently under review, except that GLTR reflects the performance of a basket of gold, silver, palladium and platinum in fixed weights.[6] OCC would appreciate the Commission's consideration of a categorical Section 4(c) exemption that will address the pending rule filings and any similar future rule filings by OCC related to options and futures on Commodity-Based ETFs, including a prospective filing in connection with the clearing of options and futures on GLTR. Such an exemption is clearly appropriate for reasons we have previously given.[7] Our principal concern at this juncture is that the exemption not be too narrow. "Commodity-Based ETFs" should include ETFs with an investment objective of achieving the price performance of a single underlying commodity or a basket of commodities, less expenses. The exemption should include not only physically-settled options and security futures on Commodity Based ETFs, but also cash-settled options or security futures on such ETFs as well as options on any index comprised of such ETFs (or of such ETFs and other component or reference securities), including, for example, options designed to measure the relative performance of one Commodity Based ETF as compared to another or a Commodity Based ETF relative to another security or index of securities or Commodity Based ETFs. Similarly, it should cover futures on such indexes if they are narrow-based.

Specific questions on which the Commission has requested comment are set forth below, followed by OCC's response.

1. Is there any reason the Commission should not provide a categorical Section 4(c) exemption for the trading and clearing of the transactions in question on gold and/or silver Commodity-Based ETFs?

There is no reason not to provide a categorical Section 4(c) exemption. OCC continues to believe that these products are securities. The fundamental legal issue with respect to all of the products referred to above is whether the underlying (or reference) ETFs are themselves securities. If they are, then options on such securities or indexes of such securities would be securities for purposes of the Securities Exchange Act of 1934 (the "Exchange Act") and outside the Commission's jurisdiction under Section 2(a)(1)(C)(i) of the Commodity Exchange Act ("CEA"). Similarly, futures on such securities or on narrow-based indexes of such securities would be security futures subject to the joint jurisdiction of the Securities and Exchange Commission (the "SEC") and the CFTC.

---

[4] *See* Rule Filing SR-OCC-2010-07.

[5] *See* Rule Filing SR-OCC-2010-09.

[6] Prospectus *available at* http://www.etfsecurities.com/us/document/downloads/ETFS_Physical_PM_Basket_Prospectus_us.pdf.

[7] *See* Letter from William H. Navin to David A. Stawick dated May 17, 2010; joint letter from William J. Brodsky and Wayne P. Luthringshausen to Chairman Gary Gensler and Chairman Mary Schapiro dated April 15, 2010.

While we recognize that arguments can and have been made concerning the status of the underlying ETFs, OCC strongly believes that they are securities both because they are investment contracts within the meaning of that term as used in the Exchange Act and because essentially identical ETFs have been traded on securities exchanges and sold by registered broker-dealers to securities customers for several years and are commonly known as securities. OCC would prefer that the Commission simply acknowledge the SEC's jurisdiction over these products, but in the absence of such an acknowledgment, OCC urges the Commission to issue a broad exemptive order that would provide regulatory certainty to the trading and clearing of these products. No legitimate regulatory purpose is served by requiring case-by-case filings. By imposing unnecessary delay and expense in bringing these products to market, this practice frustrates the goal of the 4(c) exemption as a "means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner."[8]

2. **Are the palladium and platinum markets sufficiently distinct from the gold and silver markets to justify a different regulatory approach, for the purposes of a Section 4(c) exemption, for options and futures on the Palladium and Platinum Products (i.e. the specific ETF products identified in the OCC's pending submission) as compared to that for options and futures on gold and silver Commodity-Based ETFs?**

We are not aware of any reason that the lower trading volume or higher industrial demand for palladium and platinum compared to gold and silver should "justify a different regulatory approach" to these products. While the markets for palladium and platinum may be smaller than those for gold and silver, the more relevant question for the present purpose would seem to be the size of the ETF markets. Palladium and platinum ETFs must meet the same requirements as to trading volume, outstanding shares, etc. as other equity securities that underlie exchange-traded options. As options and futures on ETFs, the Palladium and Platinum Products do not implicate any concerns not already raised by the ETFs themselves. The products are settled by delivery of the relevant ETF, not the commodity underlying that ETF. Because the ETFs already exist and are subject to SEC regulation, to the extent the Commission believes that some concern needs to be addressed, the Commission should consult with the SEC and coordinate its efforts with that agency.

The SEC and CFTC have overlapping jurisdictions in many respects, and we believe that such overlapping regulatory authority is functional only to the extent that the agencies are able to address concerns in a coordinated way. In addition, we would note that issuing the exemption at issue here does not reduce whatever jurisdiction the Commission presently has over the markets for the underlying commodities or futures or options on those commodities.

---

[8] *See* H.R. REP. NO. 102-978, at 81 (1992), *reprinted in* 1992 U.S.C.C.A.N. 3179, 3213.

3. **More generally, should the Commission consider extending such a Section 4(c) exemption to options and futures on palladium and platinum Commodity-Based ETFs on a categorical basis (i.e. without respect to issuer)?**

OCC supports the adoption of a categorical Section 4(c) exemption for options and futures on palladium and platinum Commodity-Based ETFs for the reasons set forth under (1) above. Seeing no significant difference between ETFs on gold and silver and ETFs on palladium and platinum in this respect, we encourage the Commission to issue a categorical exemption covering all options and futures on Commodity-Based ETFs, without respect to issuer.

4. **If the Commission continues granting Section 4(c) exemptions, whether on an individual or categorical basis, when presented with a request to allow options and futures on Commodity-Based ETFs, should the Commission include additional conditions and requirements? For example, should the Commission consider imposing large trader reporting obligations, position limits, or other analogous requirements when exempting options and futures on Precious Metal Commodity-Based ETFs from the Commission's jurisdiction?**

No additional conditions or requirements should be included. As discussed above, because the products in question are options and futures on ETFs, they do not implicate any concerns not already raised by the ETFs themselves.

The Release states the Commission's belief that options and futures on Commodity-Based ETFs may raise regulatory issues "due to their economic similarity to options on commodities and futures on commodities traded on designated contract markets." In particular, the Commission voices concern that futures contracts based on the commodities underlying ETFs could be affected by withdrawal of the deliverable supply for futures contracts. The Commission does not cite evidence to support this concern. OCC knows of no reason to believe that the options on Commodity-Based ETFs that are currently traded and cleared pursuant to the Previous Orders have had any such effect on the underlying commodity or futures contracts thereon, and we are not aware of any evidence to suggest that options on other Commodity Based ETFs would have such an effect. Concerns regarding the effect of ETFs on the deliverable supply of a commodity would seem to be more appropriately addressed through regulation of the ETF, not by imposing conditions or requirements on the options or futures contracts on the ETFs. To the extent that the Commission believes conditions or requirements should be imposed on these ETFs, which are subject to SEC regulation, the Commission should consult with the SEC and coordinate with that agency. If the Commission were to unilaterally impose conditions on the options or security futures contracts under the CEA, the result would be duplicative and potentially conflicting regulation of these products. Instead, OCC urges the Commission to work with the SEC by using existing arrangements whereby the two agencies can share information where doing so will assist each in performing its respective regulatory functions.

We appreciate the Commission's attention to these issues and its consideration of streamlining the process of bringing new and innovative products to market.

Sincerely,

William H. Navin

William H. Navin
Executive Vice President
and General Counsel
The Options Clearing Corporation

Cc: Robert B. Wasserman
Lois J. Gregory